

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application Number : 09/884,467 Confirmation No.: 9623  
Applicant : Jeffrey A. Bedell *et al.*  
Filed : June 20, 2001  
Title : System and Method for Analyzing Statistics in a Reporting System  
TC/Art Unit : 2167  
Examiner: : Luke S. WASSUM  
Docket No. : 53470.003030  
Customer No. : **21967**

**Mail Stop: AF**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**REQUEST FOR PRE-APPEAL BRIEF CONFERENCE**

Pursuant to the Pre-Appeal Brief Conference Pilot Program announced in the Official Gazette, Applicants hereby request a pre-appeal brief conference in the above-referenced case.

This application is appropriate for a pre-appeal brief conference. A brief statement of why applicants believe that an appeal will succeed is set forth below.

The current office action finally rejects claim 28 under 35 U.S.C. 112, first paragraph as allegedly failing to comply with the written description requirement. Claims 1-8, 10-17, 19-26 and 29 are rejected under 35 U.S.C. 102(a) as allegedly being anticipated by IBM ("The Business Intelligence Infrastructure on S/390 Accessing DB2 on OS/390") ("IBM") as evidenced by Hahn et al. ("Capacity Planning for Business Intelligence Applications: Approaches and Methodologies") ("Hahn") and IBM[1] ("OS/390 Resource Measurement Facility Report Analysis") ("IBM1"). Claims 9, 18, and 27 were rejected under 35 U.S.C 103(a) as allegedly being unpatentable over IBM as evidenced by Hahn and IBM1, in further view of U.S. Patent Application Publication 2002/0046204 to Hayes ("Hayes"). Applicants note with appreciation the indication on page 15 of the Office Action that claim 30 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. However, Applicants have opted to defer rewriting the above-identified

claim in independent form pending consideration of the arguments presented below with respect to the rejected claims.

**I. The Rejection of Claim 28 under 35 U.S.C. 112, First Paragraph**

On pages 2-3 of the Office Action, claim 28 was rejected under 35 U.S.C. 112, first paragraph as allegedly failing to comply with the written description. This rejection is hereby respectfully traversed.

Claim 28 recites “[t]he computer-implemented method according to claim 1, further comprising categorizing the at least one statistic or data into one of a plurality of groups to configure a frequency of gathering the at least one statistic or data.” The Examiner asserts that “the use of categorized statistics in order to configure the frequency does not appear to be disclosed.” See Action, pg. 3. Applicants note that support for the configuration as recited in claim 28 is found on page 15, line 17 of the specification which recites “[t]he amount of statistics logging may be configurable.” Additionally, the specification provides that time periods may be used for the logging of statistics. For example, the specification recites “[a]ccording to an embodiment of the invention, in order to provide the real-time alert reporting to an administrator, statistics may be logged within a specified time period (e.g., 5 minutes) of collection time. **Other time periods may also be used.**” Pg. 16, lines 7-9, (emphasis added). In addition, on page 16, line 20- page 17, line 2, the specification also provides that statistics may be defined by a server for various categories of information:

According to an embodiment of the invention, for the statistics to be meaningful, the processing that a server performs may be defined for an end user of the statistics. For purposes of collecting statistics, various categories of information may be tracked, including user sessions, metadata object requests, element browse requests, report execution requests, and document execution requests. Other categories may also be used.

Pg. 16, line 20 - page 17, line 2.

Applicants note that as disclosed by the specification, time periods may be specified to configure the gathering of statistics. Furthermore, categories of information may be tracked and the processing that a server performs may be defined for an end user of the statistics. If a

category is tracked that includes requests or other tracked items that occur periodically, the gathering of the statistics would be defined periodically in order to gather the statistic within the time period it occurred.

Accordingly, for at least the above reasons, the Applicants respectfully request the withdrawal of the rejection of claim 28 under 35 U.S.C. 112, first paragraph.

## **II. The Rejection of Claims 1-8, 10-17, 19-26 and 29 are rejected under 35 U.S.C. 102(a)**

Claims 1-8, 10-17, 19-26 and 29 are rejected under 35 U.S.C. 102(a) as allegedly being anticipated by IBM ("The Business Intelligence Infrastructure on S/390 Accessing DB2 on OS/390") ("IBM") as evidenced by Hahn et al. ("Capacity Planning for Business Intelligence Applications: Approaches and Methodologies") ("Hahn") and IBM[1] ("OS/390 Resource Measurement Facility Report Analysis") ("IBM1").

The independent claims 1, 10 and 19 recite "gather[ing] at least one statistic or data related to the performance operation of the reporting system while the reporting system is operating" Applicants note that there appears to be a misunderstanding of the claimed invention based on the references applied in the Action. Applicants provide the following example excerpted from the Application to further explain exemplary embodiments of the invention. Page 2, lines 2-8 of the instant application, for example, provides an exemplary embodiment that may describe various features recited in the claims. These lines recite:

The invention relates to a system and method for capturing and analyzing statistics or data related to operation of a report system. A report system provides informational and transactional content, in the form of a report, to a user (also referred to as a subscriber), such as via a web posting, e-mail, voice and other channels. ... The captured statistics or data enables analysis of the report execution, as well as analysis of the report system itself and its performance.

(Emphasis added.) Thus, these lines describe capturing statistics or data related to operation and/or performance of a report system. The references, as cited, are not related to capturing statistics or data related to operation and/or performance of a report system. Specifically IBM as cited discloses, at most, "measures of system resources utilized; for instance, CPU time, storage, I/O devices, and service units..." See Office Action, pages 4-5. IBM is not cited for disclosure of "gathering at least one statistic or data related to the performance operation of the reporting

system while the reporting system is operating.” IBM does not disclose gathering statistics of a reporting system, such as statistics on user sessions, metadata object requests, element browse requests, report execution requests, and document execution requests or other reporting system related statistics. As is known to a person of ordinary skill in the art, it is quite possible to have poor performance on a report while the underlying operating system, such as OS/390, is performing quite well. In this case and in other cases, it is quite evident that an alleged disclosure of operating system statistics is not a disclosure of reporting system statistics.

Furthermore, Hahn fails to cure this deficiency. The cited portions of Hahn are again directed, at most, to the alleged tracking of operating system statistics. For example, CPU time, storage, I/O Devices and service units are tracked. See, Hahn, pages 65-66. These are clearly operating system statistics and not reporting system statistics. An operating system is not a reporting system.

As stated in MPEP § 2131, “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” Verdegaal Bros. v. Union Oil Co. of California, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Accordingly, for at least the above reasons, the Applicants respectfully request the withdrawal of the rejection of claims 1-8, 10-17, 19-26 and 29 are rejected under 35 U.S.C. 102(a).

### **III. The Rejection of Claims 9, 18, and 27 were rejected under 35 U.S.C 103(a)**

Claims 9, 18, and 27 were rejected under 35 U.S.C 103(a) as allegedly being unpatentable over IBM as evidenced by Hahn and IBM1, in further view of U.S. Patent Application Publication 2002/0046204 to Hayes (“Hayes”).

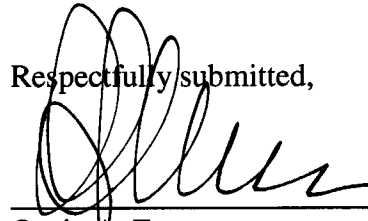
Hayes fails to cure deficiencies of IBM, IBM1 and Hahn as discussed above. Hayes is directed to “a method for automating **database bufferpool tuning** for optimized performance that employs certain heuristic algorithms.” Abstract, emphasis added. As such, Hayes is not directed towards “gathering at least one statistic or data related to the performance operation of the reporting system while the reporting system is operating.” Furthermore, Applicants believe

claims 9, 18, and 27 are separately patentable at least because there is no disclosure of reporting system tuning provided.

Accordingly, for at least the above reasons, the Applicants respectfully request the withdrawal of the rejection of claims 9, 18, and 27 under 35 U.S.C 103(a).

For at least the foregoing reasons, applicants request an appeal conference be convened to advise applicants whether the Office will 1) allow the present claims, 2) reopen prosecution and issue a new office action or 3) allow this case to proceed to appeal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Ozzie A. Farres', is written over a horizontal line.

Ozzie A. Farres  
Registration No. 43,606

Hunton & Williams LLP  
1900 K Street, NW  
Washington, D.C. 20006-1109  
(202) 955-1500

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